

Assembly Bill No. 449

CHAPTER 774

An act to add Section 23711.4 to the Revenue and Taxation Code, and to add Sections 4877, 4878, 4880, 4882, and 4884 to the Welfare and Institutions Code, relating to taxation, and making an appropriation therefor.

[Approved by Governor October 11, 2015. Filed with
Secretary of State October 11, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 449, Irwin. Income taxation: savings plans: Qualified ABLE Program.

The Personal Income Tax Law and the Corporation Tax Law, in specified conformity with federal income tax laws regarding qualified tuition programs, provide that distributions from a qualified tuition program are generally not included in the income of the donor or the beneficiary, as specified.

Existing federal law, the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), for taxable years beginning on or after January 1, 2015, encourages and assists individuals and families to save private funds for the purpose of supporting persons with disabilities to maintain their health, independence, and quality of life by excluding from gross income distributions used for qualified disability expenses by a beneficiary of a Qualified ABLE Program established and maintained by a state, as specified.

This bill would, for taxable years beginning on or after January 1, 2016, conform to these federal income tax law provisions relating to the ABLE Act under the Corporation Tax Law, as provided. The bill would also establish in state government the ABLE program trust for purposes of implementing the federal ABLE Act. The bill would authorize the ABLE Act Board to adopt regulations to implement the program. The bill would create the program fund, a continuously appropriated fund, thereby making an appropriation, and the administrative fund, as specified. The bill would require the board to administer the program in compliance with the requirements of the federal ABLE Act.

This bill would become operative only if SB 324 is enacted and takes effect on or before January 1, 2016.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to further the purposes of the federal Stephen Beck Jr., Achieving a Better Life Experience Act to

ensure that people with disabilities may save for the future to achieve greater independence.

SEC. 2. This act shall be known, and may be cited, as the California Achieving a Better Life Experience Act.

SEC. 3. Section 23711.4 is added to the Revenue and Taxation Code, to read:

23711.4. For taxable years beginning on or after January 1, 2016, Section 529A of the Internal Revenue Code, relating to qualified ABLE programs, added by Section 102 of Division B of Public Law 113-295, shall apply, except as otherwise provided.

(a) Section 529A(a) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase “under Part 10 (commencing with Section 17001) and this part” in lieu of the phrase “under this subtitle.”

(2) By substituting “Article 2 (commencing with Section 23731)” in lieu of “Section 511.”

(b) Section 529A(c)(3)(A) of the Internal Revenue Code is modified by substituting “2.5 percent” in lieu of “10 percent.”

(c) A copy of the report required to be filed with the Secretary of the Treasury under Section 529A(d) of the Internal revenue Code, relating to reports shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

SEC. 4. Section 4877 is added to the Welfare and Institutions Code, to read:

4877. (a) There is hereby created an instrumentality of the State of California to be known as the California ABLE Program Trust.

(b) The purposes, powers, and duties of the California ABLE Program Trust are vested in, and shall be exercised by, the board.

(c) The board, in the capacity of trustee, shall have the power and authority to do all of the following:

(1) Sue and be sued.

(2) Make and enter into contracts necessary for the administration of the ABLE program trust, and engage personnel, including consultants, actuaries, managers, counsel, and auditors, as necessary for the purpose of rendering professional, managerial, and technical assistance and advice.

(3) Adopt a corporate seal and change and amend it from time to time.

(4) Cause moneys in the program fund to be held and invested and reinvested.

(5) Accept any grants, gifts, appropriations, and other moneys from any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund.

(6) Enter into agreements with designated beneficiaries or eligible individuals to establish and maintain an ABLE account.

(7) Make provisions for the payment of costs of administration and operation of the ABLE program trust.

(8) Carry out the duties and obligations of the ABLE program trust pursuant to this chapter and the federal ABLE Act pursuant to Section 529A

of the Internal Revenue Code and federal regulations issued pursuant to that code, and have any other powers as may be reasonably necessary for the effectuation of the purposes, objectives, and provisions of this chapter.

(9) Carry out studies and projections in order to advise designated beneficiaries or eligible individuals regarding present and estimated future qualified disability expenses and the levels of financial participation in the ABLE program trust required in order to assist designated beneficiaries or eligible individuals.

(10) Participate in any other way in any federal, state, or local governmental program for the benefit of the ABLE program trust.

(11) Promulgate, impose, and collect administrative fees and charges in connection with transactions of the ABLE program trust, and provide for reasonable service charges, including penalties for cancellations.

(12) Set minimum and maximum investment levels.

(13) Administer the funds of the ABLE program trust.

(14) Procure insurance against any loss in connection with the property, assets, or activities of the ABLE program trust.

(15) Procure insurance indemnifying any member of the board from personal loss or liability resulting from a member's action or inaction as a member of the board.

(d) The Treasurer shall, on behalf of the board, appoint an executive director, who shall not be a member of the board and who shall serve at the pleasure of the board. The Treasurer shall determine the duties of the executive director and other staff as necessary and set his or her compensation. The board may authorize the executive director to enter into contracts on behalf of the board or conduct any business necessary for the efficient operation of the board.

SEC. 5. Section 4878 is added to the Welfare and Institutions Code, to read:

4878. (a) The board shall segregate moneys received by the ABLE program trust into two funds, which shall be identified as the program fund and the administrative fund.

(1) Notwithstanding Section 13340 of the Government Code, the program fund is hereby continuously appropriated, without regard to fiscal years, to the ABLE Act Board for the purposes specified in this act.

(2) The moneys in the administrative fund shall be available for the ABLE Act Board, upon appropriation, for administration of the act. Administrative costs shall not exceed 3 percent of the incoming funds for each fiscal year for the first five fiscal years following the opening of the first ABLE Act account. After the five-year period, administrative costs shall not exceed 1 percent of the incoming funds for each fiscal year.

(3) Funding for startup and administrative costs for the board shall be provided in the form of a loan from the General Fund sufficient to cover the board's projected administrative costs for its first two years of implementing the program. Once the loan has been expended and revenues from the program are sufficient to cover the board's ongoing costs, the board

shall repay, within five years, the amount loaned, plus interest calculated at the rate earned by the Pooled Money Investment Account.

(b) Not later than 30 days after the close of each month, the investment manager shall place on file for public inspection during business hours a report with respect to investment performance. The investment manager shall report the following information, to the extent applicable, to the board within 30 days following the end of each month:

(1) The type of investment, name of the issuer, date of maturity, and the par and dollar amount invested in each security, investment, and money within the program fund.

(2) The weighted average maturity of the investments within the program fund.

(3) Any amounts in the program fund that are under the management of an investment manager.

(4) The market value as of the date of the report and the source of this valuation for any security within the program fund.

(5) A description of the compliance with the statement of investment policy.

(c) Moneys in the program fund may be invested or reinvested by the Treasurer or may be invested in whole or in part under contract with an investment manager, as determined by the board.

(d) The board shall annually prepare and adopt a written statement of investment policy. The board shall consider the statement of investment policy and any changes in the investment policy at a public hearing. The board shall approve the investment management entity or entities consistent with subdivision (c).

(e) Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the ABLE program trust and as required by this chapter. All costs of administration of the ABLE program trust shall be paid out of the administrative fund.

(f) All moneys paid by designated beneficiaries or eligible individuals in connection with ABLE accounts shall be deposited as received into the program fund, and shall be promptly invested and accounted for separately. Deposits and interest thereon accumulated on behalf of designated beneficiaries in the program fund of the ABLE program trust may be used for qualified disability expenses.

(g) The board shall maintain separate accounting for each designated beneficiary.

(h) Any designated beneficiary may, directly or indirectly, direct the investment of any contributions to his or her ABLE account, or any earnings thereon, no more than two times in any calendar year.

(i) The assets of the trust, including the program fund, shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the designated beneficiaries and no property rights therein shall exist in favor of the state. The assets shall not

be transferred or used by the state for any purposes other than the purposes of the trust and consistent with the provisions of the federal ABLE Act.

SEC. 6. Section 4880 is added to the Welfare and Institutions Code, to read:

4880. Notwithstanding any other law, moneys in, contributions to, and any distribution for qualified disability expenses from, an ABLE account, not to exceed one hundred thousand dollars (\$100,000), shall not count toward determining eligibility for a state or local means-tested program.

SEC. 7. Section 4882 is added to the Welfare and Institutions Code, to read:

4882. (a) The board shall adopt regulations as it deems necessary to implement this chapter consistent with the federal Internal Revenue Code and regulations issued pursuant to that code to ensure that this program meets all criteria for federal tax-exempt benefits.

(b) The board may adopt regulations to implement this chapter as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 8. Section 4884 is added to the Welfare and Institutions Code, to read:

4884. The board shall market this program to residents of the State of California to the extent funds are available to do so.

SEC. 9. This act shall become operative only if Senate Bill 324 of the 2015–16 Regular Session is enacted and takes effect on or before January 1, 2016.